IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Devkinandan Khatore. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No. 654/2006
against the order dated 18-10-2005 passed
by the Chief Judicial Magistrate, Jodhpur, in
Criminal Case No. 123/2001.

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Date of Order: August 04, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Dr. S.S. Jodha, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 18-10-2005 passed by the Chief Judicial Magistrate, Jodhpur (for short, "the trial Court" hereinafter) in Criminal Case No. 123/2001, whereby the trial Court dismissed the application filed by the petitioner for dropping the criminal proceeding pending against him for the offence under Section 29 (1)(a) of the Insecticide Act, 1968 (for short, "the Act, 1968' hereinafter).

Heard learned counsel for the petitioner and the Public Prosecutor. Perused the order impugned.

Learned counsel for the petitioner submits that the other accused of the same complaint filed S.B. Criminal Miscellaneous Petition No.246/2002, which has been allowed by a coordinate Bench of this Court vide order dated 26-2-2004.

It is alleged that a sample of benomyl 50% WP of Batch No. 36 was taken from the shop of M/s. Krishna Agro Sales, Jodhpur on 24-8-2000. It was found to be misbranded. Thus, a complaint was filed on 20-12-2000 against the petitioner, who was a working Manager, for the offence under Section 29 (1) (a) of the Act, 1968. It further appears that the Joint Director of Agriculture, on behalf of the State Government, has authorized the Insecticide Inspector and Assistant Director of Agriculture (PP) to institute a case for prosecution against the petitioner under Section 29 (1) (a) of the Act, 1968. The Office Order dated 12-2-2001 is extracted as follows:-

> "Government of Rajasthan"
> Directorate of Agriculture, Rajasthan, Jaipur.
>
> No.F4(6) WC/Techl/PP/2000-01/25383-86 dated 12-2-2001.
>
> OFFICE ORDER
>
> In exercise of the powers conferred under sub-section (1) of Section 31 of the Insecticides Act, 1968 (Central Act 46 of 1968) and after careful examination of the case, I hereby give written consent on behalf of the State Government (Authorized vide Govt. Notification No.F4 (4) Agri./Cr.2/A/79 dated 19-4-84) to the Insecticide Inspector & Assistant Director of Agri. (PP) O/o Joint Director of Agri. (Ext) Jodhpur to institute the case

for prosecution under Section 29 (1) (a) of the Insecticides Act, 1968 in public interest against the following:-

DEALER:

1. M/s. Krishna Agro Sales, Plot No.27, 1st floor, Shopping Centre, Stadium, Jodhpur.

2. Shri Vinod Agrawal S/o Shri Jagdish Prasad, Prop. Of M/s. Krishna AgroSales, Plot No.27, 1st Floor, Shopping Centre, Stadium, Jodhpur.

MANUFACTURER:

1. M/s. Krishi Rasayan Exports Pvt. Ltd. FMC Fortuna, 234/3A, A.J.C. Basi Road, Calcutta-700020.

2. Shri Deoki Nandan Khatore S/o late Shri P.L. Khatore, Manager in M/s. Krishi Rasayan Exports Pvt. Ltd, FMC Fortuna, 234/3A, A.J.C. Basi Road, Calcutta- 7000020.

3. Shri Vinay Kumar Ckhuriwal S/o Shri Parmanand Churiwal R/o 4, National Library Avenue, Calcutta 700027, Director of M/s. Krishi Rasayan Exports Pvt. Ltd., FMC Fortuna, 234/3A, A.J.C. Basi Road, Calcutta- 700020.

4. Shri Atul Churiwal S/o Shri Parmanand Churiwal R/o 4, National Library Avenue, Calcutta- 700020, Director of M/s. Krishi Rasayan Exports Pvt. Ltd., FMC Fortuna, 234/3A, A.J.C. Basi Road, Calcutta-700020.

5. Shri Rajesh Kumar Agarwal S/o Shri Lakhpat Rai Agarwal, Club Road Mithanpura, Muzaffarpur (N.Bihar), Director of M/s. Krishi Rasayan Exports Pvt. Ltd., FMC Fortuna, 234/3A, A.J.C. Basi Road, Calcutta- 700020.

Joint Director of Agriculture,
(Plant Protection), Raj. Jaipur."

A bare reading of the order reveals that it neither

contains the facts constituting the offence, nor any ground for satisfaction. There is nothing to show that relevant material was placed before the Sanctioning Authority and the same was considered by him. In the identical circumstances, the consent was found to be bad in law by this sCourt in M/s. Gupta Chemicals Pvt. Ltd. and 5 others Vs. State of Rajasthan & Insecticide Inspector, reported in 1996 Cr.L.R. (Raj.) 134. It appears that the State has realised the defect of the order giving consent and as such withdrawn the same. There is no purpose of continuing the proceeding against the present petition in absence of a valid consent.

Keeping in view the absence of a valid sanction and in view of the decision of the coordinate Bench of this Court in S.B. Criminal Miscellaneous Petition No. 246/2002 decided on 26-2-2004, the instant criminal miscellaneous petition is allowed and the proceedings against the present petitioner in Criminal Case No. 123/2001, State Vs. M/s. Krishna Agro Sales & ors., pending in the Court of Chief Judicial Magistrate, Jodhpur, are quashed.

(H.R. PANWAR), J.

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